

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No. 2688 of 2001

Date of Decision: 18.8.2006

Rajinder Kumar Joshi

...Appellant

Versus

Dr. Kunj Bihari Lal Bhardwaj and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Ms. Lisa Gill, Advocate for the appellant.

Mr. Harsh Aggarwal, Advocate for respondents No.5 and 6.

AJAY KUMAR MITTAL, J.

This regular second appeal filed by the plaintiff is directed against the judgment and decree dated 2.2.2001 passed by the lower appellate court vide which the findings recorded by the trial court vide judgment and decree dated 26.8.1995 have been affirmed.

The facts as pleaded in the plaint are that the plaintiff is the owner of the house in dispute which he got by way of succession from his mother Smt. Sharda Devi. The house was mortgaged by Sharda Devi with Pandit Sham Lal for a consideration of Rs.1000/- on 21.5.1964 and later on additional mortgages were created and the total consideration came to Rs.2400/-. It was pleaded that Sharda Devi died in the year 1966 and the plaintiff wanted to take possession of the house in dispute after getting it redeemed. It was further pleaded that the plaintiff appointed defendant No.2 his attorney vide power of attorney dated 12.2.1982 and through his

attorney defendant No.2 filed a suit for redemption bearing civil suit No. 170 dated 28.4.1982. It was further pleaded that the power of attorney was drafted in Punjabi language and the plaintiff signed the same despite the fact that the same was not read over to him. It was further pleaded that on 20.1.1986 when the plaintiff visited Sangrur, found that defendant No.2 had withdrawn the suit on 24.10.1983 and sold the house in dispute to defendant No.1 for a consideration of Rs.20,000/-. It was further pleaded that the sale deed effected by defendant No.2 in favour of defendant No.1 was the result of fraud and was illegal.

Upon notice, defendants No.1 and 3 filed written statements by raising various preliminary objections. The factum of mortgage of the house in dispute by Sharda Devi with Sham Lal the grandfather of defendant No.2 for a consideration of Rs.2400/- was admitted. It was pleaded that on the direction of the plaintiff, defendant No.2 executed the sale deed dated 24.10.1983 of the house in dispute in favour of defendant No.1 for a consideration of Rs.20,000/-. It was further pleaded that the plaintiff duly appointed defendant No.2 as his attorney to sell the house in dispute. Defendant No.2 filed his separate written statement by raising various preliminary objections. It was pleaded that the plaintiff appointed defendant No.2 as his attorney and at the instance of the plaintiff, defendant No.2 sold the house in dispute to defendant No.1. Suraj Dev who was impleaded as defendant No.4 by the trial court vide order dated 18.8.1987 also filed written statement by taking various preliminary objections. It was pleaded that the house in dispute was mortgaged by Sharda Devi with Sham Lal for a total consideration of Rs.2400/- besides an amount of Rs.1000/- which was paid by Sham Lal to Narata Ram. It was pleaded that the plaintiff appointed defendant No.2 as his attorney and on his instructions, defendant No.2 had sold the house in dispute to defendant No.1 for a consideration of

Rs.20,000/- and also executed the agreement of sale before the sale deed on 14.10.1983 in favour of defendant No.1.

The trial court after appreciating the evidence led by the parties, under issue No.1 held that defendant No.2 had passed a valid title through deed of attorney Ex.P2 to defendant No.1 vide sale deed Ex.D2 dated 24.10.1983. Under issues No.2 and 5, the trial court held the plaintiff not entitled to claim possession as he has been divested of the suit property. Under issue No.4, the trial court held that the attorney Om Parkash was liable to pay the sale amount of sale deed Ex.D2 dated 24.10.1983 to the plaintiff. It was further held that he had paid the mortgage amount of Rs.3500/- to the mortgagees at the time of sale deed Ex.D2 and the plaintiff was entitled to recover the amount of Rs.16,500/- instead of Rs.20,000/-. On the basis of the aforesaid findings, the trial court dismissed the suit filed by the plaintiff vide judgment and decree dated 26.8.1995. However, the plaintiff was held entitled to recover an amount of Rs.16,500/- out of sale consideration of Rs.20,000/-. On appeal, the lower appellate court while affirming the findings recorded by the trial court, dismissed the appeal vide judgment and decree dated 2.2.2001.

I have heard learned counsel for the parties and perused the record carefully.

Learned counsel for the appellant could not show that the concurrent findings recorded by the courts below suffer from any misreading or misappreciation of evidence. No illegality or perversity could be found in the concurrent findings of fact recorded by both the courts below. No question of law, much less a substantial question of law arises in this appeal.

In view of the above, finding no merit in this appeal, the same is hereby dismissed.

August 18, 2006
gbs

(AJAY KUMAR MITTAL)
JUDGE